

CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)			Docket No.
Applicant(s): ANDERSON, et.al.			PG3654USw
Serial No. 09/937,232	Filing Date 09/24/2001	Examiner CARTAGENA	Group Art Unit 3754
Invention: VALVE			
<p>I hereby certify that this <u>Renewed Petition Under 37 CFR 1.182</u> (Identify type of correspondence)</p> <p>is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. <u>703-308-6459</u>)</p> <p>on <u>12/01/2003</u> (Date)</p> <p><u>Ban Younan</u> (Typed or Printed Name of Person Signing Certificate)</p> <p><u>Ban Younan</u> (Signature)</p>			
<p>Note: Each paper must have its own certificate of mailing.</p> <p>RECEIVED 01 DEC 2003 Legal Staff International Division</p>			

PTO/SB/17 (10-03)

Approved for use through 07/31/2008. OMB 0651-0032
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**FEE TRANSMITTAL
for FY 2004**

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT (\$)** **\$130.00****Complete if Known**

Application Number	09/937,232
Filing Date	09/24/2001
First Named Inventor	ANDERSON
Examiner Name	CARTAGENA
Art Unit	3754
Attorney Docket No.	PG3654USW

METHOD OF PAYMENT (check all that apply)		FEE CALCULATION (continued)																																																																																																																									
<input type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money <input type="checkbox"/> Other <input type="checkbox"/> None <input checked="" type="checkbox"/> Deposit Account: Deposit Account Number: 07-1392 Deposit Account Name: GlaxoSmithKline The Director is authorized to: (check all that apply) <input checked="" type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments <input checked="" type="checkbox"/> Charge any additional fee(s) or any underpayment of fee(s) <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.		3. ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Large Entity Fee Code (\$)</th> <th>Small Entity Fee Code (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tr><td>1051 130</td><td>2051 65</td><td>Surcharge - late filing fee or oath</td><td></td></tr> <tr><td>1052 50</td><td>2052 25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr> <tr><td>1053 130</td><td>1053 130</td><td>Non - English specification</td><td></td></tr> <tr><td>1812 2,520</td><td>1812 2,520</td><td>For filing a request for ex parte reexamination</td><td></td></tr> <tr><td>1804 920*</td><td>1804 920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr> <tr><td>1805 1,840*</td><td>1805 1,840*</td><td>Requesting publication of SIR after Examiner action</td><td></td></tr> <tr><td>1251 110</td><td>2251 55</td><td>Extension for reply within first month</td><td></td></tr> <tr><td>1252 420</td><td>2252 210</td><td>Extension for reply within second month</td><td></td></tr> <tr><td>1253 950</td><td>2253 475</td><td>Extension for reply within third month</td><td></td></tr> <tr><td>1254 1,480</td><td>2254 740</td><td>Extension for reply within fourth month</td><td></td></tr> <tr><td>1255 2,010</td><td>2255 1,005</td><td>Extension for reply within fifth month</td><td></td></tr> <tr><td>1401 330</td><td>2401 165</td><td>Notice of Appeal</td><td></td></tr> <tr><td>1402 330</td><td>2402 165</td><td>Filing a brief in support of an appeal</td><td></td></tr> <tr><td>1403 290</td><td>2403 145</td><td>Request for oral hearing</td><td></td></tr> <tr><td>1451 1,510</td><td>1451 1,510</td><td>Petition to institute a public use proceeding</td><td></td></tr> <tr><td>1452 110</td><td>2452 55</td><td>Petition to revive - unavoidable</td><td></td></tr> <tr><td>1453 1,330</td><td>2453 665</td><td>Petition to revive - unintentional</td><td></td></tr> <tr><td>1501 1,330</td><td>2501 665</td><td>Utility issue fee (or reissue)</td><td></td></tr> <tr><td>1502 480</td><td>2502 240</td><td>Design issue fee</td><td></td></tr> <tr><td>1503 640</td><td>2503 320</td><td>Plant issue fee</td><td></td></tr> <tr><td>1460 130</td><td>1460 130</td><td>Petitions to the Commissioner</td><td>130.00</td></tr> <tr><td>1807 50</td><td>1807 50</td><td>Processing fee under 37 CFR § 1.17(q)</td><td></td></tr> <tr><td>1806 180</td><td>1806 180</td><td>Submission of Information Disclosure Statement</td><td></td></tr> <tr><td>8021 40</td><td>8021 40</td><td>Recording each patent assignment per property (times number of properties)</td><td></td></tr> <tr><td>1809 770</td><td>2809 385</td><td>Filing a submission after final rejection (37 CFR § 1.129(a))</td><td></td></tr> <tr><td>1810 770</td><td>2810 385</td><td>For each additional invention to be examined (37 CFR § 1.129(b))</td><td></td></tr> <tr><td>1801 770</td><td>2801 385</td><td>Request for Continued Examination (RCE)</td><td></td></tr> <tr><td>1802 900</td><td>1802 900</td><td>Request for expedited examination of a design application</td><td></td></tr> <tr><td colspan="3">Other fee (specify) _____</td><td></td></tr> </table>		Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid	1051 130	2051 65	Surcharge - late filing fee or oath		1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet		1053 130	1053 130	Non - English specification		1812 2,520	1812 2,520	For filing a request for ex parte reexamination		1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action		1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action		1251 110	2251 55	Extension for reply within first month		1252 420	2252 210	Extension for reply within second month		1253 950	2253 475	Extension for reply within third month		1254 1,480	2254 740	Extension for reply within fourth month		1255 2,010	2255 1,005	Extension for reply within fifth month		1401 330	2401 165	Notice of Appeal		1402 330	2402 165	Filing a brief in support of an appeal		1403 290	2403 145	Request for oral hearing		1451 1,510	1451 1,510	Petition to institute a public use proceeding		1452 110	2452 55	Petition to revive - unavoidable		1453 1,330	2453 665	Petition to revive - unintentional		1501 1,330	2501 665	Utility issue fee (or reissue)		1502 480	2502 240	Design issue fee		1503 640	2503 320	Plant issue fee		1460 130	1460 130	Petitions to the Commissioner	130.00	1807 50	1807 50	Processing fee under 37 CFR § 1.17(q)		1806 180	1806 180	Submission of Information Disclosure Statement		8021 40	8021 40	Recording each patent assignment per property (times number of properties)		1809 770	2809 385	Filing a submission after final rejection (37 CFR § 1.129(a))		1810 770	2810 385	For each additional invention to be examined (37 CFR § 1.129(b))		1801 770	2801 385	Request for Continued Examination (RCE)		1802 900	1802 900	Request for expedited examination of a design application		Other fee (specify) _____			
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SUBMITTED BY		Complete (if applicable)	
Name	Robert J. Smith	Registration No. (Attorney/Agent)	40,820
Signature	<i>Robert J. Smith</i>	Telephone	919-483-9616
		Date	December 1, 2003

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This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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First Named Inventor ANDERSON
Examiner Name CARTAGENA
Art Unit 3754
Attorney Docket No. PG3654USW

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money ☐ Other ☐ None

☒ Deposit Account:

Deposit
Account
Number

07-1392

Deposit
Account
Name

GlaxoSmithKline

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$)

2. EXTRA CLAIM FEES FOR UTILITY AND

Extra Claims		Fee from below		Fee Paid
Total Claims				
	-20** =	0	X	0.00
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FEE CALCULATION (continued)

3. ADDITIONAL FEES

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Anderson et al.)	
Int'l Appln. No.: PCT/EP00/01444)	Examiner: Cartagena
Int'l Filing Date: February 23, 2000)	
U.S. Serial No.: 09/937,232)	Art Unit: 3754
U.S. Filing Date: September 24, 2001)	Applicant Docket #: PG3654USw
Title: VALVE)	

RENEWED PETITION UNDER 37 C.F.R. 1.182

Commissioner for Patents
Alexandria, VA 22313

Sir:

Introduction/Overview

This petition is a request for reconsideration on the merits of a decision ("Decision") denying Applicants' Petition to the Commissioner ("Petition") requesting treatment of the above application as a U.S. national stage application and instead as an application filed under 35 U.S.C. 111. The Petition was filed to request reconsideration of a notification of the PCT Legal Office vacating the Notification of Acceptance of Application under 35 U.S.C. 371 and 37 C.F.R. 1.494 or 1.495.

For the reasons set forth herein, Applicants again disagree with the decision and maintain, in view of the record examined in its entirety, that the application clearly was instructed as a national stage application, and thus was correctly accepted by the U.S. Patent Office as a national stage application. Thus, Applicants' respectfully request that the decision be reversed.

Applicant Docket No.: PG3654/USw
Serial No.: 09/937,232
Page 2 of 7

Background and Facts

The background and facts of the case at hand are set forth in the Applicants' previously-filed Petition and are thus not repeated since they have been made of record. Applicants point out that the present application was previously accepted as a 35 U.S.C. 371 national stage application by the Patent Office.

Argument

I. Applicants Satisfy the Three Key Indicators Under MPEP 1893.03(a) Which Reflect That An Application Is Filed Under 37 U.S.C. 371

In its Decision, the PCT Legal Office maintains that any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 37 U.S.C. 371(c). The Decision further states indicates that any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

Again, and as set forth in Applicants' Petition, Applicants do not question MPEP 1893.03(a) for the position that an ambiguity as to whether an application is to be filed as a national stage or a 111(a) application is to be resolved in favor of a 111(a) application. Instead, Applicants respectfully argue that the PCT Legal Office repeatedly ignores those specific and clear factors set forth in MPEP 1893.03(a) which determine identification of an application as a national stage application pursuant to 35 U.S.C. 371.

As set forth in Applicants' Petition, and to reiterate, MPEP 1893.03(a) lists three key factors in evaluating whether an application is to be considered as filed under 37 U.S.C. 371. The three factors are:

- (A) The file face form indication of a filing under 35 U.S.C. 371;
- (B) The Form PCT/DO/EO/903 indicating acceptance of the application as a national stage filing under 35 U.S.C. 371; and

Applicant Docket No.: PG3654/USw
Serial No.: 09/937,232
Page 3 of 7

- (C) Applicant's statement (or the equivalent) in the originally filed application papers that the application is a national stage filing under 35 U.S.C. 371.

Applicants' previously-filed Petition clearly sets forth that all three factors have been fulfilled. The fulfillment of these factors has not been disputed by the PCT Legal Office.

II. Applicants Have Clearly Identified The Accompanying Specification by PCT Application Number and International Filing Date in the Declaration

MPEP 1893.03(a) states:

"... In accordance with the notice at 1077 O.G. 13 (14 April 1987), if the applicant files a U.S. national application and clearly identifies in the accompanying oath or declaration the specification to which it is directed by referring to a particular international application by PCT Application Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the invention described in the identified international application, then the application will be accepted as filed under 35 U.S.C. 371. Merely claiming priority of an international application in an oath or declaration will not serve to indicate a filing under 35 U.S.C. 371....

(emphasis added)

Applicants' previously-filed Petition clearly establishes that the Declaration contained the PCT application number and international filing number as set forth in the above paragraph. The Declaration went beyond a mere claiming of priority to the PCT application.

In accordance with the express language of the above-cited passage from MPEP 1893.03(a), the application is to be accepted as filed under 35

Applicant Docket No.: PG3654/USw
Serial No.: 09/937,232
Page 4 of 7

U.S.C. 371. Applicants note that the Decision of PCT Legal Office does not dispute Applicants' statements in the declaration referencing the PCT International Application and the International Filing Date.

III. The Position of the PCT Legal Office Concerning Conflicting Instructions Regarding Whether an Application is Filed under 35 U.S.C. 111(a) or 35 U.S.C. 371 Is Erroneously Applied Out of Context

In support of its position, the Decision of the PCT Legal Office Principally relies on the final sentence of MPEP 1893.03(a):

"Also, if there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a)"

The Decision argues that the reference in the Preliminary Amendment to 35 U.S.C. 111 qualifies as a "conflicting instruction". Thus, the Decision argues that the present application must be treated as a 35 U.S.C. 111(a) filing.

Applicants disagree with the Decision on this point, and maintain that the final sentence of MPEP 1893.03(a) has been entirely and improperly interpreted out of context. When viewing this sentence in its proper context with respect to the accompanying oath or declaration in the preceding sentences, Applicants' alleged reference in the Preliminary Amendment does not qualify as a "conflicting instruction". Not discussed in the decision, the first portion of the final paragraph of MPEP 1893.03(a), discusses circumstances under which an application will be accepted as being filed under 35 U.S.C. 371, namely the clear identification of the PCT Application Number and International Filing Date in the Oath or Declaration. The final paragraph concludes by setting forth those circumstances by which the application is will not accepted under 35 U.S.C. 371, namely the presence of a conflicting instruction.

Contrary to the assertion of the PCT Legal Office, logic dictates that the final sentence of the final paragraph of MPEP 1893.03(a) is to be interpreted in view of the preceding sentences in the paragraph. More specifically, the term "any conflicting instructions" refers to Applicant's statements in the Oath or Declaration regarding the PCT International Application. If, in accordance with MPEP 1893.03(a), a U.S. national application clearly identifies in the accompanying oath or declaration the specification to which it is directed by referring to a particular international application by PCT Application Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the invention described in the identified international application, **then the application will be accepted as filed under 35 U.S.C. 371.** Thus, logic dictates that the final sentence of MPEP 1893.03(a) modifies the above provision determining acceptance of the application as being filed under 35 U.S.C. 371, i.e., "any conflicting instruction" refers to the instructions with respect to the oath and declaration.

In the case at hand, Applicants have clearly identified the application in the declaration as being a national stage application and have referred to the specific PCT application number and international filing date. **Thus, the application will be accepted, and in fact, the application was accepted as a national stage application as evidenced by the Patent Office's October 30, 2001 mailing of the "Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 C.F.R. 1.494 or 1.495".** Accordingly, in view of the fulfillment of the requirements of the declaration and the **unqualified acceptance of the application** as a national stage application, examination of the sentence referring to a "conflicting instruction", upon which the PCT Legal Office relies in its argument, is rendered entirely moot. In particular, no "conflicting instructions" have been raised by the PCT Legal Office with respect to the reference of the application as a national stage application in the Applicants' declaration.

Notwithstanding the above, and as stated herein and in Applicants' previously-filed Declaration, Applicants respectfully submit that other factors in MPEP 1893.03(a) employed in determining whether an application is to be

Applicant Docket No.: PG3654/USw
Serial No.: 09/937,232
Page 6 of 7

treated as a 35 U.S.C. 371 application have been fulfilled. Applicants have not offered a "conflicting instruction" regarding the treatment of the present application when properly viewed in the context of MPEP 1893.03(a).

Conclusion

In view of the record in its totality, it is without question that Applicants clearly instructed the Patent Office to view the above application as a national stage application and not as a filing under 35 U.S.C. 111(a). The argument of the PCT Legal Office in its Decision is arbitrary and without merit in that it does not examine the factors clearly set forth in MPEP 1893.03(a) which govern whether to treat an application as being filed under 35 U.S.C. 371 or 35 U.S.C. 111(a). Applicants have fulfilled these factors as clearly set forth herein and in Applicants' previously-filed Petition to the Commissioner.

Moreover, the presence of a single typographical error in no way gives rise to a "conflicting instruction" when properly viewed in the context of MPEP 1893.03(a), particularly in view of the overwhelming evidence to the contrary. Applicants have clearly satisfied all factors set forth in MPEP 1893.03(a). The application was, and should now be, a 35 U.S.C. 371 national stage application.

In view of the above, Applicant respectfully requests that the the decision of the PCT Legal Office be reversed, and that the present application be properly afforded its initial and correct status as a national stage application.

Applicant Docket No.: PG3654/USw
Serial No.: 09/937,232
Page 7 of 7

Respectfully submitted,

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